Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

Michelle L. Sweat,

Petitioner,

v.

State of Georgia,
Department of Human Services,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In view of the facts established by undisturbed judicial findings of the Superior Court of Georgia for Atkinson County upon uncontradicted evidence, viz., that the child support guidelines imposed by Section 19-6-15 of the Official Code of Georgia Annotated do not assume an equal and shared duty of father and mother to pay the actual costs of providing the reasonable needs of their children in proportion to the income and resources available to each, but rather impose a duty solely upon the non-custodial obligor to pay child support which is calculated only in relation to his or her income or resources without any consideration of the income or resources of the other parent, and is wholly unrelated to and often far in excess of the actual costs of raising the child or children in question,

-- Are such guidelines null and void under the guarantee of equal protection of the laws in Amendment XIV to the United States Constitution, because they do not treat men and women equally, and are thus inherently discriminatory on account of sex?

-- Are such guidelines null and void under the guarantee of family privacy in Amendment XIV, because they needlessly intrude upon the discretion of parents to raise their children as they see fit, once the reasonable needs of the children have been fairly met?

-- Are such guidelines, as statutory presumptions, null and void under the guarantee of due process in Amendment XIV of the United States Constitution, because there is no reasonable relationship between the basic facts and the facts which must be presumed for a proper award of child support?

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Comes now your petitioner Michelle L. Sweat, and she shows this honorable Court the following particulars in support of her petition for writ of certiorari to the Supreme Court of Georgia, to wit:

PARTIES

Your petitioner seeks relief in her own right against the State of Georgia, Department of Human Resources as respondent, which, in proceedings described hereinafter, acted in lieu and as representative of Samuel E. Sweat Sr., and of Robin Kayla Sweat, Samuel E. Sweat Jr., and Cynthia M. Sweat, children born in wedlock of the said Mr. Sweat as their natural father and your petitioner as their natural mother.

JURISDICTION

Your petitioner seeks reversal of a judgment of the Supreme Court of Georgia in *Georgia Department of Human Resources v. Michelle L. Sweat*, Docket No. S03A179, as entered on April 29, 2003, the same reproduced in Appendix B hereof, accessible at 2003 Ga. LEXIS 360, and officially reported as 276 Ga. 627 (2003). A petition for rehearing, styled "motion for reconsideration" in keeping with local practice, was made before and denied by the Supreme Court of Georgia on June 2, 2003, by order whereof a copy has been reproduced in Appendix A hereof.

Jurisdiction to review this cause on writ of certiorari is premised on 28 United States Code, Section 1257, insofar as it permits this Court to review the final judgment of the highest court of a State in which a decision could be had, and in which the validity of a statute of a State has been drawn into question on grounds that such statute is repugnant to the United States Constitution, in this case guarantees of equal protection, family privacy, and due process in Amendment

XIV. In this case, the statute so drawn into question is Section 19-6-15 of the Official Code of Georgia Annotated, which is reproduced in Appendix D hereof, and was declared unconstitutional by the Superior Court of Georgia for Atkinson County as reflected in Appendix C hereof, then upheld as constitutional by the Supreme Court of Georgia as reflected in Appendix B hereof.

Jurisdiction to review this cause on writ of certiorari is also premised on 28 United States Code, Section 2101(c), and Rule 13 of the Rules of the Supreme Court of the United States, insofar as they permit such review on petition filed within 90 days of the order of the court of last resort in the State denying a petition for rehearing, in this case the order of the Supreme Court of Georgia, dated June 2, 2003, denying the "motion for reconsideration," procedurally equivalent and amounting to a petition for rehearing in the State of Georgia, the same reproduced in Appendix A hereof.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case turns on those clauses in Amendment XIV, Section 1 of the United States Constitution, insofar as it provides, ". . . nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction equal protection of the laws." The statute which your petitioner contends is contrary to the foregoing provision is Section 19-6-15 of the Official Code of Georgia Annotated, which is lengthy and so is reproduced in Appendix D hereof.

STATEMENT OF THE CASE

The facts of this case are described in detail in the findings and decree of the Superior Court of Georgia in Atkinson County, dated February 25, 2002, declaring unconstitutional the child support guidelines set forth of Section 19-6-15 of the Official Code of Georgia Annotated, said findings and decree reproduced in Appendix C hereof. In due course that order was reduced to a final judgment, and a discretionary appeal was allowed and taken to the Supreme Court of Georgia which reversed the Superior Court, holding that the said guidelines are constitutional. A final judgment was rendered by the Supreme Court of Georgia on April 29, 2003, which has been reproduced in Appendix B, and thereafter rehearing was denied on June 2, 2003, as appears in Appendix A.

Stripped of unessential details, the former husband of your petitioner, Samuel E. Sweat Sr., and your petitioner were divorced in November 1998. Upon their agreement, Mr. Sweat retained custody of the three children, and your petitioner was to have substantial visitation rights or parenting time, but would not pay cash child support, since his income is far greater than the income of your petitioner. In July 2000, at Mr. Sweat's request, the respondent Georgia Department of Human Services intervened and, upon application of the child support guidelines imposed by Section 19-6-15 of the Official Code of Georgia Annotated, assessed your petitioner with a substantial cash amount per month in child support as such, and a further cash amount per month for health insurance. The amounts so assessed were oppressive to your petitioner.

As brought out in testimony upon this record, these guidelines were originally developed by Dr. Jacques van der Gaag to deal with cases in which the mother was on welfare and earning no income, while the father was absent and

earning a average gross income of $12,000 in the year 1982 ($21,426 adjusted to the year 2000). These guidelines are designed to be applied only after a reserve had been set aside to pay the basic living costs of the father. The amount awarded was limited by the amount needed to reimburse public authority for the amount of the welfare payment. And, in any event, these guidelines did not consider the cost of raising children outside the context of poverty where both parents earn incomes. Dr. van der Gaag's tract is entitled *On Measuring the Cost of Children,* Technical Papers, Vol. III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982.

Section 19-6-15 of the Official Code of Georgia Annotated applies these guidelines to all classes of child support cases, including families in which both father and mother have substantial income and resources far above the welfare level, and share parenting tasks and costs. They are applied rigorously in Georgia. See, e. g., *Ehlers v. Ehlers*, 264 Ga. 668, 449 S. E. 2d 840 (1994). The amount to be paid under the Georgia statute is determined solely by a certain percentage of the obligor's gross income depending on the number of children, and the proportionate share of net income to be paid increases as the obligor's gross income increases, without any consideration of a self-support reserve for the obligor.

Your petitioner objected to the amounts assessed against her by motion challenging the constitutionality of the guidelines under Amendment XIV, and filed on February 26, 2001, in the Superior Court of Georgia for Atkinson County. Hearings were held before the Superior Court on October 29, 2001, and January 28, 2002. Received and entertained was uncontradicted expert testimony from an economist who for many years had served the Federal Reserve Bank of Atlanta, and is an expert in the field of child support and the cost of

raising children in the Unites States. The testimony of this expert was based upon standard sources of public data, elaborately described and professionally analyzed in the text, tables, and diagrams of a 73-page economic exhibit which was adopted by the court as part of its findings. This exhibit is of public record in this case, and copies thereof can be supplied by your petitioner on request. Judge C. Dane Perkins made nineteen numbered findings of fact on February 25, 2002, these fully set forth in Appendix C hereof. These findings have never been disturbed on appeal, nor could they be revised on appeal under the circumstances of this case. See, e. g., *Georgia Power Co. v. Harrison*, 253 Ga. 212, 318 S. E. 2d 306 (1984), and *Hughes v. Cobb County*, 264 Ga. 128, 441 S. W. 2d 406 (1994). As appears in Appendix C hereof, Judge Perkins found that the child support guidelines imposed by Section 19-6-15 of the Official Code of Georgia Annotated

-- create rebuttable presumptions of what child supports awards should be (finding 1);

-- were designed only for welfare-recovery situations (finding 1);

-- apply under the statute even to non-welfare cases which constitute the vast majority of child support cases generally, yet were not designed to deal with such situations (finding 1);

-- require payments constituting an increasing proportion of net income and resources of the obligor as such income and resources increase, whereas all available economic data indicate that the cost of raising a child decreases as a percentage of net household income. The State of Georgia was unable to present any economic data suggesting that the cost of raising a child increases as a percentage of net household income (finding 2);

-- include no baseline components or definitions which may be addressed in rebuttal (finding 3);

-- do not consider significant tax-related offsets enjoyed by the custodial parent (findings 4 and 6);

-- are not related to the actual costs of raising a child (finding 5);

-- give the custodial parent a huge windfall in excess of the actual costs of raising a child (finding 5);

-- do not allocate the burden of child support according to the ability of both the custodial and the non-custodial parent to pay (finding 6);

-- typically dictate awards which are disproportionate to the ability of the non-custodial obligor to pay (finding 6);

-- are based solely upon the non-custodial parent's income and resources (finding 6);

-- dictate awards which often include hidden but tax-free alimony (finding 7);

-- dictate hidden alimony which often exceeds customary standards of fairness even for alimony (finding 8);

-- by using a range of percentages within which an award may fall for similarly situated non-custodial obligors, can dictate awards which require individuals with the same income and resources to pay materially different amounts of child support for the same number of children (finding 9);

-- can require awards which will push lower-income obligors beneath the poverty standard of living (findings 10);

-- do not consider the custodial parent's income and resources (finding 11);

-- consider the child costs of the custodial parent when the child is with the custodial parent, but not the similar or identical child costs of the non-custodial parent when the child is with the non-custodial parent (finding 12);

-- make it possible for obligors similarly situated to pay or avoid medical costs above the presumed amount (finding 13);

-- provide no consistent and clear guidance or standard for deviation from the presumed amounts (finding 14);

-- bear no reasonable relationship to economically appropriate awards (finding 15);

-- do not assume an equal duty of both parents to support their children (finding 16);

-- assume the non-custodial parent to be an obligor even in circumstances which might dictate an opposite result (finding 17); and

-- interfere with the non-custodial parent's discretion to raise his or her child as he or she sees fit, once all reasonable needs of the child have been met (finding 18).

Additionally, Judge Perkins found that, as applied to the particular circumstances of your petitioner, the said guidelines dictate a result which, in light of bankruptcy obligations, would drive her below a poverty standard of living (finding 18). He found also that Mr. Sweat has

significantly higher income than your petitioner, and that the application of these guidelines to her gives Mr. Sweat significant tax-free income, together with important tax advantages, not to mention the earnings of his new spouse. The application of these guidelines, Judge Perkins found, would "constitute a windfall" to Mr. Sweat and a "financial disaster" to your petitioner. Judge Perkins found more generally that any calculation of child support on the basis thereof "would be so far removed from any economically rational and appropriate award" as to constitute a "gross error well beyond mere imprecision" (finding 19).

Judge Perkins held that procreation is a joint act and a joint responsibility; that, by reason of the constitutional guarantee of equal protection of the laws, both father and mother have an equal duty, free of any preference for or against the father or the mother on account of sex, to pay child support on an ability-to-pay basis; and that, by reason of family privacy protected by constitutional principle, the amount of child support imposed by the State is constitutionally limited to insuring that the reasonable needs of the children supported are met, and may not extend to extravagances or luxuries; and that the child support guidelines imposed by Section 19-6-15 of the Official Code of Georgia Annotated, considered as statutory presumptions, deny due process of law, and are, therefore, null and void, because the basic facts, viz., the gross income of the non-custodial obligor and the percentage of the non-custodial obligor's gross income demanded, are not reasonably related to what the presumed facts must be, given the constitutional standard of child support, i.e., the actual costs of providing the reasonable needs the children apportioned according to an equal duty of father and mother to provide those needs on an ability-to-pay basis. Upon entry of a judgment declaring the child support guidelines imposed by Section 19-6-15 unconstitutional, Judge Perkins adjusted the child support

burden of your petitioner to an affordable level, whereupon a final judgment was entered. A discretionary appeal by the attorney general to the Supreme Court of Georgia was allowed and taken in view of the constitutional issues raised in the case.

The Supreme Court of Georgia reversed the judgment of the Superior Court outright and without remand, holding essentially that the guidelines imposed by Section 19-6-15 must be upheld if only there is some "rational basis" to sustain them, since, in the view of the court, no fundamental right, or protected class, or invidious discrimination was involved; that the guidelines imposed by Section 19-6-15 have a rational basis, because the amount to be paid depends on income level and the guidelines, considered as statutory presumptions, can be rebutted; that, therefore, Section 19-6-15 has a reasonable basis and is constitutional; and (in footnote 6) that, in any event, your petitioner had no standing to raise the question of sex discrimination prohibited by the constitutional guarantee of equal protection because she had not shown she was treated differently on account of her sex than a similarly situated man would have been.

A writ of certiorari is sought to review the judgment of the Supreme Court of Georgia.

REASONS WHY THE WRIT SHOULD BE GRANTED

1. General Impact: A writ of certiorari should be granted, because the Supreme Court of Georgia has decided this case in a way which conflicts with the relevant constitutional decisions of this Court, and these questions of federal law, especially the substantive issue, are of enormous practical importance in assuring that child support be fairly ascertained and promptly paid across the land. See Rule 10(c) of the Rules of the Supreme Court of the United States.

The outpourings of demagogues aside, hard experience teaches that the main reason for delinquencies in the payment of child support is not "dead beat" dads or moms, but unshared and unaffordable burdens unrelated to the costs of raising children. Give non-custodial parents fair access to their children and oblige them to pay support upon fair distribution of the burden of supplying actual needs, and there will be few delinquencies. That is the unmistakable lesson from real life.

Under the Federal Family Support Act of 1988 (42 United States Code, Sections 666-667, implemented by 45 Code of Federal Regulations, Sections 302.55-302.56), every State must have child support guidelines framed as rebuttable presumptions in order to receive appropriations offered by Congress as incentives for child support collection, and every State has now accepted these incentives which total many billions of dollars annually. The guidelines of some States are more satisfactory than the guidelines of other States. As found by Judge Perkins, the guidelines adopted by the State of Georgia are particularly ill-suited to the interests of justice. Very significant constitutional questions are common to all States, and this case offers an excellent opportunity for this Court to provide necessary guidance on relevant constitutional principles. Again see Rule 10(c) of the

Rules of the Supreme Court of the United States. Untold thousands of lives have been wrecked under the excessive and unrealistic burdens imposed by these guidelines in Georgia and similar guidelines in several other States.

2. The Child Support Guidelines in this Case: Grave legal doubts, based on impeccable authority, have long existed concerning Wisconsin-style obligor-only welfare-recovery guidelines as applied to all private divorces. It has been judicially recognized that such guidelines, when mechanically applied in non-welfare cases, often produce unfair and excessive awards of child support. See, e. g., *Smith v. Smith*, 626 P. 2d 342 at 345-346 (Ore. 1981), and *Parrett v. Parrett*, 432 N. W. 2d 664 at 672 (Wisc. App. 1988). Cf. *Moylan v. Moylan*, 384 N. W. 2d. 859 at 861-862 (Minn. 1986). An insightful discussion of such guidelines can be found in William C. Akins, *Why Georgia's Child Support Guidelines Are Unconstitutional*, 6 Georgia Bar Journal, No. 2, pp. 8-14, 54-57 (October 2000). A similar article published some years ago in Minnesota is by Thomas W. Wexler, *Child Support Guidelines: Constitutional and Logical Infirmities*, 54 Hennepin Lawyer, No. 4, pp. 12-14, 26-28 (March-April 1985).

The undisturbed and penetrating findings of Judge Perkins and these thoughtful articles in and of themselves demonstrate how very serious are the constitutional questions here raised, and why a writ of certiorari should be granted to resolve them for the benefit of our country.

3. The Standard of Review: The central question in this case arises in that Judge Perkins applied a fairly rigorous standard of review, pretty much in the tradition of classic cases like *Houston & Texas Central Ry. v. Dallas*, 84 S.W. 648 at 653-654 (Tex. 1905), which held that, where an exercise of general legislative authority rests upon assumed

facts, those facts may be judicially examined, and, if upon such inquiry, it becomes evident that the means chosen are disproportionate or unrelated to an otherwise legitimate end, the statute should be declared unconstitutional. The Georgia Supreme Court applied a very relaxed "rational basis" standard of review on the pretext that there was no invidious discrimination or fundamental right involved in this case. But the Georgia Supreme Court plainly enough understood that, if invidious discrimination or a fundamental right were involved, a heightened standard of scrutiny would be called for.

Your petitioner insists that both invidious discrimination and a fundamental right are involved in this case for reasons made clear in the findings and analysis of Judge Perkins, but that these reasons were completely overlooked by the Supreme Court of Georgia. Your petitioner has a constitutional right to enjoy and standing to demand the protections of a heightened standard of scrutiny as becomes clear from an examination of the judicial decisions of this Court, and courts across the country applying principles determined by this Court.

Discrimination on account of sex requires a heightened standard of scrutiny, because the right to vote cannot be denied on account of sex, because the right to vote is inclusive and protective of other rights, and equal protection of the laws is guaranteed. See especially the opinions of Justice Sutherland in *Adkins v. Children's Hospital*, 261 U. S. 525 at 552-553 (1923), and Justice Brennan in *Frontiero v. Richardson*, 411 U. S. 677 at 685 (1973). And it has been definitively established by this Court that sex discrimination mandated by statute is subject to a "strong presumption" of unconstitutionality, which can be overcome only by an "extremely persuasive justification," as appears especially in

the opinion of Justice Ginsberg in *United States v. Virginia*, 515 U. S. 518 at 531-534 (1996).

The right to family privacy is also constitutionally protected as a fundamental right, as such subject to heightened scrutiny, as appears in cases such as *Griswold v. Connecticut*, 381 U.S. 479 (1965). This fundamental right has no less been recognized by the same court as ignored it in this case. See, e. g., *Clark v. Wade*, 273 Ga. 587 at 594, 544 S. E. 2d 99 (2001).

Your petitioner maintains, as did the Superior Court of Georgia for Atkinson County, that a proper standard of child support must stay within limits prescribed by constitutional principle, including the prohibition of sex discrimination and the protection of family privacy, and that, if such standard inevitably or necessarily departs from those limits, it imposes invidious discrimination, invades a fundamental right, is subject to a heightened standard of scrutiny, is per se unconstitutional unless legally justifiable, and may be attacked on that basis by anybody against whom the statute is about to be enforced, regardless of other considerations.

For it has been held by eminent tribunals that, if a standard of child custody fails to distribute rights between father and mother equally, such standard is flawed with sex discrimination, and is, therefore, per se unconstitutional. See e. g., *State ex rel. Watts v. Watts*, 350 N. Y. S. 2d 285 (N. Y. Fam. Ct. 1975), and *Commonwealth ex rel. Spriggs v. Carlson*, 368 Atl. 2d 635 (Pa. 1977), which struck down the old presumption that the mother should be granted custody of children of tender years.

4. Underinclusive Statutes and Standing: A question of unlawful sex discrimination is usually raised by application of a statute denying rights to a man or woman on account of

sex. Thus, in *Mississippi University for Women v. Hogan*, 458 U. S. 718 (1982), a statute allowed nurses' training for women but excluded men from such education: the men applying for admission to nurses' training were deemed to have standing to raise the question of sex discrimination, and the statute imposing such discrimination was declared unconstitutional. The case of your petitioner is not of that kind. On this basis the Supreme Court of Georgia held that she had no standing to raise the question of sex discrimination, and that, since no such discrimination was involved, a relaxed standard of review was sufficient.

But the Supreme Court of Georgia completely overlooked that another kind of sex discrimination is actionable. If a statute unjustifiably operates to distribute rights and duties differently between men or women, such a statute is per se unconstitutional on account of sex discrimination, and anybody against whom the statute is enforced may challenge the statute, whether or not he or she has actually suffered discrimination on account of sex in the application of the statute.

The leading case is *Orr v. Orr*, 440 U. S. 268 (1979), in which a statute allowed alimony to women but not to men, and so was unconstitutional because it failed to distribute rights and duties equally without regard to sex. Justice Brennan characterized the statute as inherently discriminatory on account of sex and thus unconstitutional because it was "underinclusive." A man who never sought alimony was sued by his former wife to collect arrears in alimony. He was allowed to challenge the statute on grounds of equal protection, and the statute was declared unconstitutional. And in *Orr*, 440 U. S. at 273, Justice Brennan specifically noted that the same principle applies to child support. The vice of the statute was not necessarily the formal distinction drawn,

but the operative effect of distributing rights and duties differently between men and women.

Lest doubt remain, other cases have held that a litigant does not have to be a member of a class discriminated against in order to attack a law or practice inherently discriminatory on account of race or sex. It so appears unmistakably from *Powers v. Ohio*, 499 U.S. 400 at 410-416 (1991), which concerns discrimination on account of race, but the principle was acknowledged applicable as well to discrimination on account of sex in *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127 at 128 and 138 (1994).

In this case, the statute is inherently discriminatory against men or women on account of sex. The vice of the statute is not in the formal distinction drawn between custodial and non-custodial parents, but in its operative effect, for it excludes sharing of a burden of supporting children on the basis of an equal duty of fathers and mothers in keeping with their respective means. Under the highest law of the land, this burden must be equally shared on an ability-to-pay basis by men and women who become parents. In keeping with *Powers* and *J.E.B.*, your petitioner is harmed in fact, because the burden of child support is not so shared. Again in keeping with *Powers* and *J.E.B.*, your petitioner has a concrete interest in assuring that both men and women be treated equally so that the burden will be shared. And, yet further in keeping with *Powers* and *J.E.B.*, the former spouse of your petitioner is hindered by asserting equality of men and women, because, if he did so, he would lose the benefit of the guidelines in seeking to assess more from your petitioner. Therefore, your petitioner has standing, not only under *Orr*, but under *Powers* and *J.E.B.*, to demand that men and women be treated equally.

Orr, reinforced by *Powers*, and *J.E.B.*, is the controlling authority, was completely disregarded and never cited by the Supreme Court of Georgia, yet was conscientiously noted and applied by the Superior Court. This Court should intervene to assure the integrity of its established precedents, for these precedents have been openly flaunted by the Supreme Court of Georgia, and thereby a significant injustice has resulted not only to your petitioner, but to untold thousands of her fellow citizens in Georgia and other States where such guidelines have been adopted, then applied inflexibly and mechanically.

The Supreme Court of Georgia noted that Section 19-5-16 of the Official Code of Georgia Annotated formally distinguishes between, not men and women as such, but custodial and non-custodial parents. Your petitioner answers that parents of children are, after all, fathers and mothers, i.e., men and women, and the statute does not assume and impose an equal duty upon fathers and mothers alike. The statute, therefore, inevitably and necessarily departs from distributing rights and duties equally between men and women, which is why the statute is subject to heightened scrutiny. De facto discrimination is as unlawful as de jure discrimination, and discrimination inevitably resulting or necessarily implied is as unlawful as discrimination formal and express. See e. g., *Keyes v. School District No. 1*, 413 U. S. 189 (1973). And not only does this statute necessarily and inevitably, and thus formally discriminate on account of sex, but in his discussion of the appropriate standard of scrutiny in Appendix C hereof Judge Perkins explicitly found that this case actually includes de facto discrimination on account of sex, for which additional reason heightened scrutiny is called for.

Under *Orr*, *Powers*, and *J. E. B.*, your petitioner may attack such discrimination, both de jure and de facto.

5. A Constitutional Standard of Child Support: There is, after all, a constitutional standard of child support which generally prohibits sex discrimination. Not only does this standard follow ineluctably from cases like *Frontiero* and *Orr*, but it has been expressly recognized by the Pennsylvania Supreme Court in *Conway v. Dana*, 318 Atl. 2d 324 (1974). See also *Melzer v. Witsberger*, 480 Atl. 2d 991 (Pa. 1984), and *Smith v. Smith*, 626 Pac. 2d 342 at 343-345 (Ore. 1981). The constitutional standard is that child support must be set in an amount which considers *the equal duty of both fathers and mothers, i. e., the equal duty of men and women*, to support their children on an ability-to-pay basis.

The constitutional standard of child support includes a *further element of family privacy*, which allows some regulation by government, but involves the fundamental right of parents to raise their children as they see fit, as brought out unmistakably in such as cases *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), which conceded the power of government to require education of youth, but left to parents the right to determine religious training by sending them to denominational schools; *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which again acknowledged power of government to require education of youth, but allowed parents the right to keep children from public schools so long as they conscientiously and competently prepare their children for adulthood in their distinctive way of life; and *Troxel v. Granville*, 530 U.S. 57 (2000), which conceded some power of government to require a natural mother or father to allow visitation by extended family, yet upheld the right of such parent to impose reasonable limits on such visitation. Undoubtedly, a State may require payment of child support, but the public interest is limited to assuring that reasonable needs -- i. e., basic needs plus or minus whatever may be required by special circumstances -- are met, and can extend

no further. See e. g., *Moylan v. Moylan,* 384 N. W. 2d at 866.

Therefore, the guidelines imposed by Section 19-6-15 of the Official Code of Georgia Annotated, in order to meet constitutional muster, must not only impose an *equal duty* upon fathers and mothers to support their children, but must limit such support to the actual costs of supplying *reasonable needs*. Child support cannot be used as a false pretext to order tax-free alimony, or to redistribute wealth, or to engage in other such social engineering. Once reasonable needs have been fairly met, parents have a fundamental to raise their children as they see fit within the rubric of family privacy acknowledged by this Court.

It is precisely because, as found by Judge Perkins, these guidelines do not assume an equal duty of fathers and mothers, and often go far beyond the reasonable needs of the children, effectively granting hidden tax-free alimony, sometimes exceeding customary limits of reason even for alimony, that Section 19-6-15 of the Official Code of Georgia is unconstitutional.

There is a *further dimension of due process of law in this case*, because the guidelines imposed by Section 19-6-15 of the Official Code of Georgia Annotated are statutory presumptions, a point artfully recognized by Judge Perkins, but wholly overlooked by the Supreme Court of Georgia.

The applicable principles of due process under Amendment XIV have been expounded by this Court on numerous occasions. See e. g., *Manley v. Georgia*, 279 U.S. 1 at 6 (1929); *Western & Atlantic R. R. v. Henderson*, 279 U.S. 629 at 642-644 (1929); *Leary v. United States*, 395 U.S. 6 at 32-37 (1969); and *Vladnis v. Kline*, 412 U.S. 441 at 446-447 (1973). The law is that, in order to

pass constitutional muster, legal presumptions of the kind imposed by Section 19-6-15 of the Official Code of Georgia, must have two characteristics: they must not be arbitrary, i. e., there must be a reasonable relationship between the basic facts and the presumed facts; *and, moreover*, they must be fairly rebuttable.

The thrust of Judge Perkins' findings of fact, based on uncontradicted evidence, and neither challenged nor disputable nor revised on this record, is that Georgia's guidelines are arbitrary in that there is no reasonable relationship between the basic facts and what must be the presumed facts, -- i.e., no reasonable relationship between these guidelines and the constitutional standard of child support, -- i.e., no reasonable relationship between whatever percentage of the non-custodial obligor's income is indicated by the guidelines and the equal duty of father and mother to provide the reasonable needs of their children.

6. General Conclusions: It follows that these guidelines are unconstitutional. They are unconstitutional, because they do not assume an equal duty of mother and father to support their children. They are unconstitutional, because they invade the discretion of parents to raise their children as they see fit, once the reasonable needs of their children have been met, and thus they intrude needlessly upon family privacy. And they are unconstitutional because, as statutory presumptions, they are arbitrary, i.e., there is no reasonable relationship between the basic facts and the what must be the presumed facts.

These guidelines are subject to heightened scrutiny as Judge Perkins properly observed, and as the Supreme Court of Georgia completely overlooked, because Section 19-6-15 of the Official Code of Georgia Annotated imposes invidious discrimination and invades a fundamental right.

And your petitioner goes further, insisting that, *even assuming a more relaxed standard of review*, Section 19-6-15 of the Official Code of Georgia Annotated cannot stand. For the Supreme Court of Georgia claimed a two-fold "rational basis" to sustain the statute. The Supreme Court of Georgia first cited the rebuttable feature of these guidelines. But as Judge Perkins found, these guidelines are arbitrary because unfounded, having no relationship to the equal duty of both parents and the cost of raising a child, and, as is clear from *Manley*, *Henderson*, *Leary*, and *Vladnis*, a presumption not resting upon a reasonable connection between basic and presumed facts, cannot be salvaged merely by giving it a rebuttable feature. The Supreme Court of Georgia also pointed to the fact that the payments indicated by these guidelines are dependent on income level, and this feature was supposed to justify the statute with a reasonable basis. But that consideration cannot salvage this statute either. For in *Development of Guidelines for Child Support Orders, Advisory Panel Recommendations and Final Report,* Office of Child Support Enforcement, United States Department of Health and Human Services, 1987, Ch. II, p. 126, it is noted that Wisconsin-style, obligor-only, welfare-recovery guidelines, such as exist in Georgia, have "the effect of setting orders as an increasing percentage of net income, as obligor income rises." But says the report, "This effect is contrary to the economic evidence on actual child-rearing expenditures." And this fact was confirmed by Judge Perkins on the basis of all available empirical data (Appendix C, finding 2).

CONCLUSION

WHEREFORE, your petitioner respectfully prays for a writ of certiorari to the Supreme Court of Georgia that this injustice may be corrected.
Respectfully submitted,

Dated: August 13, 2003

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NOTE: Mr. Graham and Mr. LeCroy were respectively admitted to the Bar of the Supreme Court of the United States on August 5, 1971, and October 9, 1984.

APPENDIX A
SUPREME COURT OF GEORGIA

Case No. S03A0179 Atlanta, June 02, 2003

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

GEORGIA DEPARTMENT of HUMAN RESOURCES
v.
MICHELLE L. SWEAT

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied. Fletcher, C. J., Sears, P. J., Benham, Carley, Thompson and Hines, JJ., and Judge Alford J. Dempsey, Jr., concur. Hunstein, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/Sherie M. Welch, Clerk

APPENDIX B

IN THE SUPREME COURT OF GEORGIA

Decided: April 29, 2003

S03A0179. GEORGIA DEPARTMENT of HUMAN RESOURCES v. SWEAT et al.

SEARS, Presiding Justice.

The trial court declared Georgia's statutory child support guidelines to be unconstitutional, concluding they violate the constitutional guarantees of due process, equal protection and privacy, and also operate as an unconstitutional taking of property. Having reviewed the matter, we conclude that the trial court erred by employing incorrect constitutional standards and unsound constitutional analyses. Therefore, we reverse.

When they divorced in November 1998, Samuel and Michelle Sweat agreed that Samuel would retain custody of the couple's three minor children, that Michelle would have visitation rights, and that Michelle would not be required to pay child support. In July 2000, at Samuel's request, the Georgia Child Support Enforcement Agency notified Michelle of a "possible modification" of her child support obligation and asked her to furnish financial information. Michelle complied with the request and shortly thereafter, based upon Georgia's statutory child support guidelines (the "Guidelines")[1], the Agency instructed Michelle to begin paying $452 her month in child support and $79 per month toward her children's health insurance.

Michelle challenged both the child support award and the Guidelines themselves. A hearing was held, after which the

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[1] OCGA § 19-6-15.

trial court declared the Guidelines unconstitutional. The court made many findings of fact concerning the purpose, effect, and uses of the Guidelines and then concluded that because the Guidelines are arbitrary, were hastily enacted, and have been reviewed by an unqualified Guideline Commission, they violate substantive due process under both the Georgia and United States Constitutions. The trial court also held that the Guidelines violate state and federal equal protection guarantees by placing different burdens on individuals who, "but for the award of child custody," are similarly situated. The court then ruled that the Guidelines violate the right to privacy because they interfere with "parental decisions ---- ding financial expenditures on children." Finally, the court held that the Guidelines violate the Georgia Constitution's takings clause by reducing Michelle "to poverty status" such that she could not afford to appeal this action if she was unsuccessful in the trial court. Based on these conclusions and on its own determination of a constitutionally sound standard for the determination of child support, the trial court also denied the Agency's request for modification of the original child support agreement, ruled that Michelle owed no child support, and ordered the state (in the event DHR appealed the trial court's ruling) to provide Michelle with a transcript of the proceedings at no cost to her. For the reasons explained below, we -reverse.

1. OCGA § 19-6-15 provides the only means by which a Georgia court may either set or modify an amount of child support to be paid by a noncustodial parent.[2] The child support guidelines contained in section 19-6-15 provide an outline for the courts to use in setting child support payments in a fair and consistent manner. In brief, the guidelines instruct trial courts to compute a non-custodial parent's gross

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[2] *Ehlers v. Ehlers*, 264 Ga. 668, 669 (449 SE2d 840) (1994).

income and, depending upon the number of children for whom support is required, set an amount of support to be paid within five percent of statutorily prescribed levels.[3] Trial courts may, in their discretion, vary the amount of support to be paid for any of eighteen "special circumstances" listed in the statute.[4]

2. The trial court erred in concluding that Georgia's child support guidelines violate both the Georgia and United States Constitutions' guarantees of substantive due process. A statute is presumed to be constitutional unless it is established that it "manifestly infringes upon a constitutional right or violates the rights of the people[]."[5] Where, as here, a statute does not infringe upon a fundamental right and the complaining party is not a member of a suspect class, substantive due process analysis of governmental action is performed under the "rational basis test." [6]The trial court clearly erred in applying

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[3] OCGA § 19-6-15 (b).

[4] OCGA § 29-6-15 (c).

[5] *Love v. State*, 271 Ga. 398, 400 (517 SE2d 53) (1999).

[6] The trial court's error stems from its finding that the Guidelines are biased against non-custodial fathers and hence discriminate on the basis of gender. By their tern, the Guidelines distinguish only between custodial and non-custodial parents, without regard for their gender. Furthermore, even if there was a colorable claim that the Guidelines affect then disproportionably, mere statistical evidence of differing effects on men and women, with no evidence of invidious discrimination, does not give rise to heightened scrutiny for purposes of constitutional analysis. See *Jefferson v. Hacket*, 406 U.S. 535, 548 (92 SC 1724, 32 LE2d 285) (1972). Furthermore, because appellant is a woman, she has no standing to claim the Guidelines, as

an intermediate scrutiny analysis to appellant's due process and equal protection claims rational basis test is the least rigorous level of constitutional scrutiny.[7] Under this test, a statute will be upheld in the face of a due process attack so long as it is reasonably related to the public health, safety or general welfare.[8] In the arena of social welfare and economics, a statute is not rendered unconstitutional merely because its classifications are imperfect; "[if] the classification has some reasonable basis, it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'"[9] To the contrary, "only if the means adopted, or the resultant classifications, are irrelevant to the [state's] reasonable objective, or altogether arbitrary, does the [statute] offend due process."[10]

Clearly, the Guidelines are designed to further the important and highly reasonable objective of ensuring that adequate support is provided for Georgia's children whose parents have divorced or separated. Moreover, the Guidelines' means of determining the amount of support to be paid are

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applied, discriminate against men. *Ambles v. State*, 259 Ga. 406 (1) (383 S.E.2d 555) (1989) (a party has standing to challenge the constitutionality of a statute only if the statute adversely impacts that party's rights).

[7] *Board of Trustees v. Garrett*, 531 U.S. 356,366-67 (121 SC 955, 148 LE2d 866) (2000); of *Lilburn v. Sanchez*, 268 Ga. 520, 522 (491 SE2d 353) (1997).

[8] *Sanchez*, 268 Ga. at 522.

[9] *Dandridge v. Williams*, 397 U.S. 481, 485 (96 SC 1153, 25 LE2d 491) (1970) (citation omitted).

[10] *Sanchez*, 268 Ga. at 522.

not arbitrary in any sense of the word. The Guidelines take into account and vary the amount of support to be paid based upon the non-custodial parent's income level as well as eighteen enumerated "special circumstances" that may be used to modify the amount of support to be paid.[11] While the Guidelines do classify between custodial and non-custodial parents, that distinction is required in order to ensure that the non-custodial parent contributes his or her fair share to ensure the welfare of the children is protected. Thus, the rational relationship between the Guidelines and their goals is clear, and the Guidelines are not arbitrary in either their means or their distinctions. It follows that the Guidelines comport with the substantive due process requirements of both the Georgia and United States Constitutions, and the trial court erred by concluding otherwise.

3. The trial court erred in concluding that Georgia's child support guidelines violate both the Georgia and United States Constitutions, guarantee of equal protection under the law. The protections provided in the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and in Article I, Section I, Paragraph II of the Georgia Constitution are construed to be consistent.[12] Where, as here, no fundamental right or suspect classification is involved, an equal protection challenge to legislative classification is examined under the "rational basis" test.[13] Under the ratio

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[11] OCGA § 19-6-15 (b), (c).

[12] *Union City Board of Zoning Appeals v. Justice Outdoor Displays*, 266 Ga. 393, 400 (467 S.E.2d 875) (1996).

[13] *Craven v. Lowndes County Hosp. Auth.*, 263 Ga. 657, 659 (437 S.E.2d 348) (1993). As discussed in note 6, supra, the trial court erred in finding that the Guidelines are gender biased. That error resulted in the final court's mistaken

basis test, a court will uphold the statute if, under any conceivable set of facts, the classifications drawn in the statute bear a rational relationship to a legitimate end of government not prohibited by the Constitution. "Those challenging the statute bear the responsibility to 'convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision maker.'"[14]

It is fundamental that no equal protection violation exists unless legislation treats similarly-situated individuals differently.[15] Contrary to the trial court's conclusion, custodial and non-custodial parents are not, by definition, similarly situated. The custodial parent often contributes to the costs of caring for children, and also takes primary responsibility for the day-to-day care of a child, maintains a separate household suitable for the children, and depend upon the Guidelines to ensure he or she receives adequate financial resources from the non-custodial parent to assist in raising the child: Non-custodial parents generally have measurably less involvement in the day-to-day care of children, and depend on the Guidelines to ensure that their financial support obligations are not out of proportion to their income level. Of course, the financial contributions of non-custodial parents are significant and are often the result of hard work and sacrifice; nonetheless, it is generally true that "after divorce, the custodial parent's responsibility for the child's support as well

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application of the "intermediate scrutiny" test to appellee's equal protection claim.

[14] *Cross v. Stokes*, 275 Ga. 872, 877 (572 SE2d 538) (2402), quoting *Craven*, 263 Ga. at 659.

[15] *Willowbrook v. Olech*, 528 U.S. 562,564 (120 SC 1073, 145 LE2d 1060) (2001).

as care is general and plenary, while the noncustodial part's responsibility is usually limited to the requirements of the support order."[16] Accordingly, the trial court erred by concluding that custodial and non-custodial parents are similarly situated.

The trial court also erred by implying that the Guidelines affect only obligors of child support payments. The custodial parent is profoundly affected by the amount of support ordered to be paid pursuant to the Guidelines, If the level of financial support is to remain the same, every dollar deducted from a child support obligor's payment results in an increase to the payee parent's child-rearing costs. Thus, application of the Guidelines affects both custodial and non-custodial parents.

The rational basis standard applied to statutes such as this one "'reflects the Court's awareness that...drawing distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary."[17] As discussed in the preceding Division, there is a clear rational connection between the Guidelines and the legitimate state interest of protecting the well-being of Georgia's children. Insofar as the Guidelines further that goal by drawing permissible distinctions between custodial and non-custodial parents, and without discriminating between similarly-situated individuals, appellant's equal protection analysis is meritless.

4. The trial court erred by concluding that the Guidelines violate the constitutional right to privacy. Appellee has no

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[16] *Boris v. Blaisdell*, 42 Ill. App.3d 1034, 1047 (492 NE2d 622 (1986).

[17] *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (96 SC 2562, 49 LE2d 520) (1976).

recognizable privacy interest in the process by which her child support obligations will be determined. Child support levels are not subject to purely private determinations. The level of child support to be paid is always subject to court approval: "'The trial court ... is not bound by an agreement between the parties regarding child support nor is its obligation satisfied by simply adopting that agreement. The trial court is obligated to consider whether such support is sufficient based an the children's needs and the parent's ability to pay."[18] By definition, setting child support payment levels is a public function and process. Furthermore, as discussed above, Georgia's public policy dictates that divorced parents contribute financially to the will-being of their children. Thus, the Guidelines do not infringe upon appellee's privacy interests.

5. The trial court erred in concluding that the Guidelines resulted in an "illegal taking" from appellee in violation of the Georgia Constitution. Simply put, the Guidelines are not a governmental "taking," but rather represent the state's efforts to ensure adequate care for children whose parents have divorced or separated. Furthermore, the Georgia Constitution provides that "private property shall not be taken or damaged *for public purposes* without just and adequate compensation being first paid."[19] The Guidelines do not allow a taking for public purposes, but rather ensue that non-custodial parents help pay the costs of supporting their children. It follows that there is no merit to appellant's claim of an unconstitutional taking of property.

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[18] *Arrington v. Arrington*, 61 Ga. 547 (407 SE2d 758) (1991).

[19] Georgia Const. (983), Art. I, Sec. III, Para. 1 (emphasis added).

6. The trial court erred by concluding that due to the "confiscatory nature of the Guidelines," appellee would be unable to afford her own transcription costs and therefore the State should be ordered to supply her with a transcript of the trial court proceedings at no cost. Insofar as appellee has never been ordered to pay child support, the trial court's factual predicate far ordering the state to supply a transcript is non-existent. This Court has never held that a non-indigent party should be supplied w'th a transcript at no cost.[20] "There is simply no authority for the . . . position that an indigent has the right to free court reporter services in an appellate, civil proceeding."[21] Accordingly, the trial court erred in ordering that a transcript be provided at no cost to appellant in this case.

Judgment reversed. Fletcher, C.J. Benham Carley Thompson and Hines, JJ. And Judge Alford Dempsey, concur; Hunstein J. disqualified.

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[20] See OCGA § 5-6-4 1.

[21] *Qaurterman v. Edwards*, 169 Ga, App. 300, 301 (312 SE2d 643)(1983).

APPENDIX C

IN THE SUPERIOR COURT OF ATKINSON COUNTY STATE OF GEORGIA

GEORGIA DEPARTMENT OF	*	
HUMAN RESOURCES	*	
ex. rel. CHARLES R. REDDICK	*	
Special Assistant Attorney General	*	
o/b/o ROBIN KAYLA SWEAT	*	
SAMUEL E. SWEAT, JR.	*	
CYNTHIA M. SWEAT	*	
	*	
Plaintiff	*	
	*	
	*	
v.	*	CIVIL ACTION
	*	NO. 2000 C 127
	*	
MICHELLE L. SWEAT	*	
and	*	
SAMUEL SWEAT, SR.	*	
	*	
Defendants	*	

ORDER DECLARING GEORGIA'S CHILD SUPPORT GUIDELINES VOID AND UNCONSTITUTIONAL

WHEREAS, Defendant Michelle Sweat filed a Motion to Declare Georgia's Child Support Guidelines Unconstitutional (hereinafter, the "Challenge"), and

WHEREAS, sworn testimony, documentary evidence and both oral and written argument of counsel has been presented thereon and duly considered by this Court,

NOW, THEREFORE, this Court hereby declares the child support guidelines codifed in section 19-6-15, O.C.G.A. (hereinafter, the "Guidelines") to be null and void as the Guidelines violate numerous provisions of the Constitutions of both the United States and the State of Georgia for the reasons set forth below.

FACTS

The Case Sub Judice

In the case now before this court, the "family" consists of the father, Samuel Ezell Sweat, Sr., who is the custodial parent ("CP"), the mother, Michelle Lynn Sweat, who is the noncustodial parent ("NCP"), and three minor children, to-wit: .Cynthia Marie Sweat, date of birth March 7, 1985; Samuel E. Sweat, Jr., date of birth October 11, 1990; and Robin K. Sweat, date of birth March 30, 1983. The parents were married July 16, 1984. They separated September 20, 1998. They were divorced in Civil Action Number 98-D-37 by this court on November 12, 1998, the Hon. Dane Perkins presiding. The parties had agreed that the father would have custody of the minor children, the mother would have visitation rights, and she would not be obligated to pay child support. The parties' agreement was made the judgment of the court on November 12, 1998. On or about July 14, 2000, Monica Houseal, an agent with Child Support Enforcement ("Agency") in Nashville, Georgia, forwarded a document to the NCP advising her that the agency had received a written request for "possible modification", and requesting she furnish certain financial information to the agency. NCP responded by completing the questionnaire sent to her. The only "special Circumstance" she indicated was the ages of the children. Agent Houseal prepared a document entitled "Agency Recommendation". This document found that the father's gross monthly income was $2,647.50, and that the

mother's gross monthly income was $1,585.95. Subsequently, the mother's monthly gross income has risen to $1,862. Her expenses totaled $2,127.00 at that time. Houseal found no "special circumstances" to exist, and recommended the mother pay child support for three children based on the child support guidelines which provide a range of 25% to 32% for three children. Her recommendation was further that the NCP pay between $132.16 and $169.17 per child per month as support and that she provide accident and sickness insurance if it was available to her " . . . at a reasonable cost not to exceed 5% of NCP gross income". There was no recommendation that the mother get credit for her medical insurance payment for the children against the child support she was recommended to pay, nor was there a recommendation that any "co-payments" be paid by the CP or at least that he share such expenses. Agent Houseal recommended to this Court, less than two years after approving the parties' agreement as stated above, to order the mother to pay her former husband child support in the amount of $150.67 per child, which is exactly midway between the percentages, but rounded up to sixty-seven cents rather than leave it at sixty-six. Ms. Sweat was sought to be obligated to pay $452.01 in child support and up to $79.29 per month for insurance, or a total of $531.30 out of her before taxes income. Subsequent to the initiation of this action, Ms. Sweat filed for Chapter 13 bankruptcy protection with payments to the Chapter 13 Trustee being set at $295.00 per month. Agent Houseal stated that this factor was not considered when making a recommendation for Ms. Sweat's child support obligation. After initiation of this action, the Challenge was filed.

STANDARD OF SCRUTINY ON CONSTITUTIONAL ISSUES

The only evidence before this Court regarding the impact of the Guidelines on any cognizable group is the study of custody awards in 14 south Georgia counties between 1995-97 conducted by Kent Earhardt, J.D., Ph.D., which found that, in 82.2% of contested cases, custody was awarded to the mother. It follows, therefore, that a support obligation under the Guidelines was imposed on the fathers in those cases. *Ehlers v. Ehlers,* 264 Ga. 668 (1994). There has been no credible challenge to the methodology or the result of the Earnhardt study. Therefore, this Court finds that men are adversely impacted by the Guidelines *as applied* to a grossly disproportionate degree, which constitutes an impermissibly discriminatory effect on a group based upon their gender.

Having found an impermissible impact based on gender, the standard of scrutiny to be applied is the intermediate test, i.e., are the Guidelines substantially related to an important governmental objective? *Clark v. Jeter,* 486 U.S. 456, 108 S. Ct. 1910, 1914 (1988).

All parties concede that providing a rational basis for the calculation of the child support obligation of *both* parents as set forth in section 19-7-2, O.C.G.A. is a legitimate governmental purpose. The question is whether it is of such importance as to justify the vehicle chosen by the legislature, i.e., the Guidelines? Because of the myriad of constitutional flaws in the Guidelines set forth below, this Court finds that the State of Georgia has not satisfied this test.

Further, if this Court were only to apply the lowest standard of scrutiny, i.e., whether the Guidelines bore a rational relationship to a legitimate government purpose, the Guidelines would still fail.

FINDING OF HARM

This Court finds that the Guidelines as applied to Defendant Michelle Sweat in this case as well as every other parent in this State who is not granted custody of his or her child is harmful and that the harm flowing from the constitutional flaws in the Guidelines is suffered each and every time a payment calculated thereunder is due.

ECONOMIC/FINANCIAL ISSUES

Inasmuch as the essential nature of the Guidelines is to allocate economic and financial burdens and benefits, their validity must be determined primarily, if not exclusively, on an economic analysis.

The purpose of the Guidelines is to conform to the federal mandate found in 42 U.S.C.A. section 651, et seq. and 45 CFR sections 302.55 and 302.56, that govern the receipt of federal funds by states under the Social Security Act. The regulations cited require an economically rational form of guideline for apportioning child "costs" between parents obligated to support the children in question with "appropriate" support awards. Therefore, the intended purpose of Georgia's child support guidelines is to determine an economically appropriate child support award. This Court finds that the Guidelines fail to do so.

There having been no evidence, credible or otherwise, to contradict the matters presented therein, this Court adopts as part of its findings of fact the Economic Exhibit of R. Mark Rogers (hereinafter, the "Economic Exhibit") as the cornerstone for its finding that the Guidelines are economically unsound. A copy of the Economic Exhibit is attached hereto and incorporated herein by this reference. Certain matters set forth in the Economic Exhibit and

articulated in greater detail in the hearings before this Court bear highlighting, though this is not intended to overlook the importance of other economic matters.

FINDINGS OF FACT

1.

The Guidelines adopted by Georgia as originally designed by the underlying economic study were intended only for welfare situations—the current use for all situations was not the intended purpose. The underlying facts of the presumptions—their application only in welfare situations and with constraints such as a low ceiling award limited in size to the amount of the welfare payment to the custodial parent—no longer exist. The presumptive percentages were based only on data for low-income cases and were extended without the benefit of data for non-welfare cases. In the current case, the percentages are applied beyond the amount needed for recovery of any welfare payment to the custodial parent that might have been made.

2.

Georgia's presumptive awards rise as a share of obligor after-tax income. No child cost studies show child costs rising as a share of after-tax income. All child cost studies show child costs declining as a share of after-tax income. The state has presented no evidence that child costs rise as a percentage of household net income. Georgia's Guidelines are arbitrary and are not rational since there is no economic foundation for presumptive awards that rise as a share of household net income. In the current case, the presumptive percentage results in a significantly higher obligation than one based on actual child costs that decline as a share of net income.

3.

There are no baseline components to the Guidelines. It is not clear what is being rebutted, therefore they are arbitrary and a due process violation.

4.

The Guidelines do not take into account the large tax-related child cost offsets the custodial parent receives. Custodial parents typically receive $200 to $350 per month in extra after-tax income just for having custody. These child-related tax benefits are head of household status, child exemptions, child tax credits, child care credits, and earned income credits. Both parents have an equal duty of support for the costs attributable to the children. Both parents are equally entitled to the cost offsets attributable to the same children but in proportion to their obligation. Not sharing the child-related tax benefits violates equal protection. Not sharing the tax benefits with both parents is an extraordinary benefit for the custodial parent and an extraordinary burden for the non-custodial parent. In this case, Mr. Sweat, the custodial parent, receives approximately $300 per month in extra after-tax income from having custody and as a result of current income tax law. This is a cost offset benefit that Ms. Sweat is denied by the Guidelines. The original study by Jacques van der Gaag upon which the Guidelines were based was done in 1982 when the parent that contributed the most support for the children was given rights to claim the tax exemptions of the child. The original study also was limited to low-income households with incomes averaging $12,000 in 1982 dollars, or $21,426 in year 2000 dollars.

5.

The presumptive award results in the custodial parent receiving a huge financial windfall—or profit—in excess of child costs. For typical income situations, the custodial parent ends up with a higher standard of living than the non-custodial parent—even when the non-custodial parent earns significantly more than the custodial parent. This is an extraordinary benefit for the custodial parent and an extraordinary burden for the obligor. In the current case, expert testimony has shown that the custodial parent's profit (presumptive award less an economics based award) is substantial.

6.

The Georgia presumptive award does not allocate the child support burden according to the parents' relative ability to pay. This is because the obligor has a rising after-tax percentage of income paid to the custodial parent for child support. These percentages exceed actual child costs and the custodial parent uses the profit as an offset to the custodial parent's implied contribution to child costs. Additionally, the custodial parent receives substantial child-related tax benefits that the non-custodial parent does not receive. The outcome is that the custodial parent does not contribute to child costs at the same rate as the non-custodial parent and, often, not at all.

7.

Evidence presented based on presumptive after-tax, after-child support awards and the standard of living benchmark of the U.S. government's poverty thresholds show that the Guideline presumptive awards include such large amounts of hidden alimony (presumptive award less an economics based

award) that a non-custodial parent is unable to provide for a child when in the non-custodial parent's care to the same extent as in the custodial parent's household. Presumptive awards have been shown to typically exceed total actual costs according to the U.S. Department of Agriculture. This violates equal protection standards for both the child and the non-custodial parent. Such excessive child support awards are not in the best interest of the child because the non-custodial parent is not able to sufficiently provide for the children while in the non-custodial parent's care. In the current case, the presumptive award leaves the non-custodial parent in poverty while the custodial parent enjoys a notably higher standard of living.

8.

The Guidelines are biased toward including hidden alimony for the custodial parent even when the custodial parent earns substantially higher gross income than the non-custodial parent. The Guidelines do not meet standards of fairness even for alimony. If the Guidelines did, there would be a narrowing of the standard of living gap for the non-custodial parent when the custodial parent has a higher gross income. Instead, the Guidelines boost the standard of living of the custodial parent relative to non-custodial parent in both circumstances—when the custodial parent earns either substantially less or substantially more than the non-custodial parent. The Guidelines bear no relationship to the standards for child support of requiring each parent to have an equal duty in supporting the child.

9.

The use of a range of percentages allows substantial opportunity for similarly situated individuals to receive dissimilar treatment. That is, different obligors with the same

income can end up with presumptive obligations that differ by hundreds of dollars per month. The difference between upper and lower bound presumptive awards is substantial. The upper bound presumption is higher than the lower bound presumption by as much as 35 percent. The guidelines give no guidance on how to choose the presumption within the ranges, resulting in arbitrary decisions. Georgia is the only state to use a range of presumptive percentages. This conflicts with the intent of 45 CFR 302.56 that intends the presumptive formula result in a single presumptive figure for a given case in order to reduce uncertainty of what the presumptive award is. For the current case, the presumptive award range varies by $130 (upper bound award less lower bound award). This is seven percent of the obligor's gross income—a substantial variation in the presumptive award.

10.

The presumptive award for low-income obligors (for example, minimum wage workers) pushes low-income obligors below the poverty level. A presumptive award that leaves the obligor with less income than needed for basic living needs creates an extraordinary burden for the obligor and, potentially, an additional burden on taxpayers. This violates equal protection. This is contrary both to public policy and common sense.

11.

The Guidelines do not take into account custodial parent income. The presumptive child support award does not vary with family income—only obligor income. This is not economically rational and violates equal protection. The custodial parent is not held to the same standard for contributing to child costs. In most cases, the custodial parent's obligation of support ends up being largely or

entirely paid by the non-custodial parent. In the current case, the child support case worker for the case gave testimony specifically stating that the custodial parent's income had no bearing on the recommended award. This case worker stated there is no formula in their official procedures by which case workers can determine how the custodial parent's income affects the presumptive award.

12.

Child costs of only the custodial parent are covered by the Guidelines. Similar costs incurred when the child is with the non-custodial parent do not receive similar consideration. Yet, parents are similarly situated when child costs are incurred by either parent. Each parent has an equal duty to provide financially for the children when in the care of the other parent. The Guidelines were based on welfare situations in which the obligor parent was absent, did not require the custodial parent to support the children financially (the custodial parent did not work and had no earned income), did not take into account the custodial parent receiving large child-related tax benefits, and did not take into account the obligor paying substantial income taxes (with the obligor outside the assumed very low income level). However, in actual practice, typically the non-custodial parent is not absent and incurs substantial child costs that the guidelines do not require the custodial parent to contribute. This violates equal protection and does not meet the financial needs of the children when they are in the care of the non-custodial parent. In the current case, the obligor provides housing, food, clothing, entertainment and other needs for the children when in her care. The Guidelines do not require that the custodial parent share in the costs of the non-custodial parent.

13.

Medical insurance costs are not treated the same for all obligors. The presumptive award includes typical medical expenses. The Guidelines allow the court to either treat an obligor's payment of the children's medical insurance as an add-on or as a credit toward the presumptive award. This dissimilar treatment violates equal protection. Additionally, there is different treatment for obligors depending on whether insurance is available through employers. Obligors with medical insurance coverage available through employers are held to a higher standard than those without availability of medical insurance through employers. For the current case, the obligor pays approximately $70 dollars each month to provide health insurance for the children. The Guidelines allow the court to either subtract this $70 as a credit for the obligor against a presumptive cash award or to add $70 to the presumptive cash award as an add-on. The difference between these alternatives is $140 per month for the obligor.

14.

The Guideline criteria for deviation do not give any guidance on how to apply the deviations in a consistent manner. This is unconstitutionally vague and generally results in no deviations in most cases—even when the circumstances to deviate exist.

15.

The Guidelines are arbitrary and bear no relationship to the intended federal purpose of determining an economically appropriate child support award. The Guidelines have no rational relationship to child cost data. Among other considerations, first of all, the Guidelines were implemented for all cases (beyond just welfare cases) without the benefit of

any supporting economic data. Additionally, the presumptive awards rise as a share of net income—which conflicts with all child costs studies. The Guidelines do not take into account where the actual child costs are incurred—that is, which parent incurs what costs. The Guidelines do not take into account child costs net of tax benefit offsets.

16.

The Guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.

17.

Which parent is the obligor and which is the obligee should be determined only after examination of the relevant factors—not before. The financial circumstances should determine which parent is obligor. The Guidelines arbitrarily presume that the obligor is always the non-custodial parent when the financial circumstances may indicate just the opposite. Importantly, mere classification before-hand of the obligor does not provide sufficient information to determine the economically appropriate award. The classifications of obligor and obligee are not rationally related to the intended purpose of the Guidelines of determining the economically appropriate award.

18.

The Guidelines interfere with a non-custodial parent's constitutional right to raise one's children without "unnecessary" government interference. The Guidelines are so excessive as to force non-custodial parents to frequently work extra jobs for basic needs—detracting from parenting without state justification. Low-income obligors are frequently forced to work in a cash economy to survive as a

result of child support obligations that if paid push the obligor below the poverty level. This is the result of automatic withholding of child support with payroll jobs and use of guidelines that presumptively push minimum wage obligors below the poverty level. As these workers are forced to "disappear" into unofficial society, these obligors are deprived of the constitutional right to raise their children without unnecessary government intrusion. In fact, any government mandate beyond basic child costs interferes with this right to privacy as occurs with the current guidelines.

For the current case, the presumptive award pushes Ms. Sweat, the obligor, to just above the poverty level and below the poverty level if she pays court ordered bankruptcy payments. This is an extraordinary burden imposed on the obligor by the Guidelines.

19.

In the present case, the earnings of the obligee, Samuel Sweat, significantly exceed those of the obligor. Nonetheless, the guidelines require the obligor, Michelle Sweat, to pay out a significant amount of her before tax income to the obligee, to whom this money will be tax free. The income of the obligee will be considerably increased, and he will have the tax advantages attendant to being a custodial parent. Additionally, the obligee will have the additional benefit of his new spouse's earnings. In the meantime, the obligor's net earnings will probably put her at or below the poverty line, and will in any event leave her with less than half of her earnings to live on. This scheme thus constitutes a windfall to the obligee and financial disaster to the obligor.

Thus, any calculation of a support award under the Guidelines would be so far removed from any economically rational and appropriate award that it constitutes a gross error well beyond any "mere imprecision."

CONCLUSIONS OF LAW

CONSTITUTIONAL ISSUES

This Court hereby incorporates by this reference the authorities cited in the Challenge as well as the Findings of Fact set forth above. As with certain of the matters contained in the Economic Exhibits, some highlights are in order.

Due Process

The United States' Constitution provides that no state may "deprive any person of life, liberty or property without due process of law." U.S. Constitution, Am. 5, Am. 14, section 1. The Constitution of the State of Georgia contains an almost identical guarantee at Ga. Const., Art. I, section I, paragraph 1. Protection from arbitrary state action is the very essence of *substantive* due process. *Slochower v. Bd. of Higher Educ. of the City of New York,* 350 U.S. 551, 76 S. Ct. 637 (1956).

Given the very nature and purpose of the Guidelines, this Court finds that there is an overriding governmental pecuniary purpose involved. *D.H.R. v. Ofutt,* 217 Ga. App. 823 at 825 (1995).

This Court finds that the Guidelines were hastily enacted and left unchanged without sufficient examination of relevant economic data and for those reasons as well as the gross deviation from all child cost studies as noted previously, finds them to be arbitrary and capricious. See *Sierra Club v. Martin,* 168 F. 3d 1 (11th Cir., 1999).

With all due respect to the members of the Governor's Commissions on Child Support (hereinafter, the "Commission") in both 1998 and 2001, it is clear that only one member in 1998, Mr. Mark Rogers, and none in 2001

were properly qualified by education, background and experience to accurately assess the economic and financial intricacies of the Guidelines. This, too, the Court finds to be indicative of arbitrary state action.

This Court also finds that Mr. Rogers, as well as other economists well versed in child support matters, testified in 1998 as to the many flaws in the Guidelines. Mr. Rogers again testified before the Commission in 2001. In addition, this Court takes Judicial notice pursuant to section 24-1-4, O.C.G.A. and, further, has heard evidence of the publication of an article in the October 2000 issue of the Georgia Bar Journal discussing at some length the equal protection and due process violations with which the Guidelines are rife. William C. Akins, *Why Georgia's Child Support Guidelines are Unconstitutional.* Thus, the State of Georgia can no longer contend that the Guidelines remain in place out of "official ignorance." This Court finds that this constitutes further proof of arbitrariness on the part of the State and, if left in place, may rise to a volitional violation of the constitutional protections afforded the citizens of this State.

In declaring that the Guidelines violate the aforesaid substantive due process guarantees, this Court takes guidance from the very state upon whose guidelines Georgia's are purportedly based. In *Parrett v. Parrett*, 146 Wis. 2d 830 at 842, 432 NW 2d 664 (6) (1988, the Court of Appeals of Wisconsin), a case that did not raise constitutional issues, found that, particularly in higher income situations, their guidelines, like Georgia's, would "result in a figure so far beyond the child's needs as to be irrational." This is the very sort of arbitrary result the due process clauses are designed to prevent. *Manley v. Georgia,* 279 U.S. 1, 49 S. Ct. 215 (1929). Additionally, the presumption is unconstitutional because the underlying facts (the Guidelines application only in welfare cases for recovery of only up to the welfare payment to the

custodial parent) no longer exist. *Leary v. United States*, 395 U.S. 6 at 32-37 (1969).

Equal Protection

The United States' Constitution provides that no state may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Am. XIV, section 1. Ga. Const., Art. I, section I, paragraph 2 provides essentially the same protection.

The egregiously different burdens and benefits placed on persons similarly situated but for the award of custody, i.e., parents with the obligation to support their child(ren) and the same means for doing so as when they were married, has been explained at length above. This Court finds that such disparate treatment violates the guarantees of equal protection cited above. *Jones v. Helms,* 452 U.S. 412, 101 S. Ct. 2434 (4,5) (1981), *South Central Bell Telephone Co. v. Alabama,* 526 U.S. 160, 119 S. Ct. 1180 (1999), *Romer v. Evans,* 517 U.S. 620, 116 S. Ct. 1620 (1996) and *Simpson v. State,* 218 Ga. 337 at 339 (1962). The Guidelines do not result in awards based on the constitutionally sound principles of equal duty and proportional obligation (proportional to available financial resources such as each parent's income). See *Smith v. Smith*, 626 P 2d 342, 345-348 (Oregon, 1980); *Meltzer v. Witsberger*, 480 A.2d 991 (Pa. 1984); and *Conway v. Dana*, 318 A.2d 324 (Pa. 1985).

Right to Privacy

While the source of the right to privacy has been held to originate in varying constitutional provisions, it has been long recognized to apply to "family" concerns *whether the family exists within the confines of marriage or not.*

Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029 (8) (1972), *Roe v. Wade,* 410 U.S. 113, 93 S. Ct. 705 at 726-28 (1973).

This Court finds that, by requiring the non-custodial parent to pay an amount in excess of those required to meet the child's basic needs, as the economic analysis has shown, the Guidelines impermissibly interfere with parental decisions regarding financial expenditures on children. *Troxel v. Granville,* 530 U.S. 57, 120 S. Ct. 2054 (2000) and 147 L. Ed. 2d 49 (U. S. 2000); *Moylan v. Moylan,* 384 NW 2d 859 at 866 (Minn., 1986).

Unconstitutional Taking of Property

Georgia's guidelines as set out in OCGA Sec. 19-6-15 (b) are unconstitutional per se and as applied to Michelle Sweat in that by reducing her to poverty status she is thereby denied access to the courts in violation of the Constitution of 1983, Art. 1, Sec. 1, Par. XII which reads, "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this State." In this case Ms. Sweat has filed a separate motion for recordation of these proceedings; however, as a result of the confiscatory nature of the guidelines she will be unable to afford to pay the cost of transcribing the proceedings, and as a result, may be denied her right to appeal. It is therefore ordered that the State provide Michelle Sweat with a transcript at no cost to Michelle Sweat in the event of an appeal.

Georgia's guidelines are also unconstitutional per se and as applied in that they constitute an illegal taking in violation of the Constitution of Georgia of 1983, Art.1, Sec. 111, Par.1, because the plaintiff is seeking to impose an award under the Guidelines against Ms. Sweat for the purpose of the state continuing to receive federal funds under 45 CFR

302.56 and related federal code. This constitutes a public taking for a public purpose. See also *DHR v. Ofutt* above.

Recent Supporting Foreign Opinion

One issue of equal protection is taking into account all of an obligor's dependents—not just those involved in the instant case. On January 29, 2002, a Tennessee Court of Appeals issued an opinion that Tennessee's child support guidelines not having a presumptive formula for ensuring that all of an obligor's dependents received support on an equal basis violated equal protection rights and is unconstitutional. See *Dee Ann Curtis Gallaher v. Curtis J. Elam*, In the Court of Appeals of Tennessee at Knoxville, July 11, 2001 Session, Appeal from the Juvenile Court for Knox County, No. B-3443, filed January 29, 2002, No. E2000-02719-COA-R3-CV. Georgia's Guidelines do not have a presumptive formula for dependents of an obligor not in the instant case to ensure their equal support. Any formula for deviation on this matter that Georgia DHR may have is not presumptive, is not statutory, and is not applied statewide in all cases in which an obligor has additional dependents other than those in the instant case. For the reasons stated in *Dee Ann Curtis Gallaher v. Curtis J. Elam*, Georgia's Guidelines without such presumptive formula likewise violate equal protection requirements as related to multiple family situations and are unconstitutional.

The Constitutionally Acceptable Child Support Standard

This Court finds, as a matter of law, that a constitutionally sound standard for the determination of child support guidelines can readily be determined.

First, it must acknowledge the principle codified in section 19-7-2, O.C.G.A., that *both* parents are obliged to

support *their* children in accordance with their relative means to do so. The Supreme Court of the United States has provided ample reason to conclude that any guideline discriminating against either parent would be found constitutionally defective. See, for example, *Orr v. Orr,* 440 U.S. 268 (1979), *Mississippi University for Women v. Hogan,* 458 U.S. 718 (1982) and the authorities cited in the equal protection section above. The decisions of our sister States in holding unconstitutional statutory presumptions that custody of children of "tender years" should be awarded to the mother is also persuasive. *State ex rel. Watts v. Watts,* 350 N.Y.S. 2d 285 (N.Y. City Fam. Ct., 1973), *Commonwealth ex rel. Spriggs v. Carlson,* 368 Atl. 2d 635 (Pa., 1977). Procreation is both a joint act and a joint *responsibility.*

Secondly, it must conform to long-acknowledged limitations on government intrusion into the rights of families articulated in *Pierce v. Society of Sisters,* 268 U.S. 510 (1925), *Wisconsin v. Yoder,* 406 U.S. 205 (1972) and the authorities cited in the section on the right to privacy, above. That is, the government's interest in family expenditures on children, whether that family exists before or after the dissolution of marriage, or even in the absence of marriage, is limited to insuring that the children's basic needs are met. Not extravagances, not luxuries, but needs. Once that occurs, government intrusion must cease. *Moylan v. Moylan,* above.

The third and final criteria is that the means chosen for the purpose of determining need and allocating each parent's respective responsibility in meeting that need, whether in the form of a presumptive guideline or otherwise, must be based on a rational relationship between the predicate facts and the conclusion(s) directed. *Leary v. U.S., Western & A.R.R. v. Henderson,* above.

This standard is not dissimilar to the former needs vs. ability to pay standard, but with the additional criteria that the needs are not excessive, the ability to pay is that of both parents and that the method of calculation is economically rational.

As explained above, the Guidelines fail miserably in meeting these standards.

CONCLUSION

In light of the Georgia child support guidelines being unconstitutional, Michelle Sweat shall not be required to pay Samuel E. Sweat any child support based upon her gross income of $1,862 per month, the father's gross income of $2,647.50 per month, and the mother having parenting time with the children at least 20 percent of the time. The mother shall, however, continue to provide health insurance for the children which currently costs approximately $70 per month for so long as it is available through her employer. The mother shall also pay 14.3 percent of any unreimbursed medical expenses of the children that exceed $250 per year. This percentage is based on her share of combined income above self-support needs. For the foregoing reasons, the Defendant's Motion to Declare Georgia's Child Support Guidelines Unconstitutional is hereby GRANTED.

SO ORDERED this 25th day of February, 2002.

s/ C. Dane Perkins

HONORABLE C. DANE PERKINS
Judge of Superior Court
Alapaha Judicial Circuit
State of Georgia

APPENDIX D

Section 19-6-15 of the Official Code of Georgia Annotated

19-6-15 Child support in FINAL verdict or decree; computation of award; guidelines for determining amount of award; continuation of duty to provide support; duration of support.

(a) The provisions of the Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent expressly authorized in subsection (e) of this Code section and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply. In the final verdict or decree the truer of fact shall specify in what amount and from which party the minor children are entitled to permanent support The final verdict or decree shall further specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid. The final verdict or decree shall further include a written finding of the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this code section. The truer of fact must also determine whether the accident and sickness insurance for the child or the children involved is reasonably available at reasonable costs through employment related or other group health insurance policies to an obligor. For purposes of this code section, accident and sickness coverage shall be' deemed available if the obligor has access to any policy of insurance authorized under Title 3 through an employer or other group health insurance plan. If the accident and sickness insurance is deemed available at reasonable cost, the court shall order the obligor t() obtain the coverage provided, however, if the obligee has accident and sickness insurance for the child or children reasonably available at reasonable costs through

employment related or other group health insurance policies, then the court ray order that the child or children be covered under such insurance and the obligor contribute as part of the child support order such part of the cost of providing such insurance or such part of any medical expenses incurred on behalf of the child or children not covered by such insurance as the court may deem equitable or appropriate. If currently unavailable or unreasonable in cost the court shall order the obligor to obtain coverage when it becomes available at a reasonable cost unless such insurance it provided by the obligee as provided in this subsection. When support it awarded, the party who it required to pay the support shall not be liable to third persons for necessaries furnished to the children embraced in the verdict or decree. In any contest case the parties shall submit to the court their proposed findings regarding the gross income of the father and the mother and the presence or absence of special circumstances. In any case in which child supportis determined by a jury, the court shall charge t the provisions of this Code section and the jury shall be required to return a special interrogatory similar to the form of the order contained in (Code Section19-5-12 regarding the gross income of the father and the mother and the presence or absence of special circumstances. Furthermore nothing contained within this Code Section shall prevent the Parties from entering into an enforceable agreement to the contrary which may be made the order of the court pursuant to the review by the court of child support amounts contained in this Code sections, provided, however, such agreement of the parties shall include a written statement regarding the gross income of father and the mother and the presence or absence of special circumstances hi accordance with subsection (c) of this Code section.

(b) The child support award shall be computed as provided in this subsection;

(1) Computation of child support shall be based upon gross income;

(2) For the Purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income. and all other income except need-based public assistance;

(3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income:

(4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefit's received by an employed obligor, may be included in calculating the obligor's gross monthly income; and

(5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by percentage based on the, number of children for whom child support is being determined. The applicable percentages of gross, income to be considered by the truer of fact are:

Number of Children	Percentage Range of Gross Income
1	17 percent to 23 percent
2	23 percent to 28 percent
3	25 percent to 32 percent
4	29 percent to 35 percent
5 or more	31 percent to 37 percent

Application of these guidelines shall create a rebuttable presumption that the amount of the support awarded is the correct, amount of' support to be awarded. A written finding or specific finding on the record for the award of child support that the application of the guidelines would be unjust OR inappropriate in it particular case shall be sufficient to rebut the presumption in that case. Findings that rebut said presumption must state the amount of support that would have been required under the guidelines and include Justification of why the order varies from the guidelines. These guidelines are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of trial.

(b) The tier of fact shall vary the final award of child support, up or down, from the range enumerated in paragraph (5) of subsection (b) of this Code section upon a written finding that the presence of one or more of the following special circumstances makes the presumptive amount of support either excessive or inadequate;

(1) Ages of the children;

(2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available:

(3) Educational costs;

(4) Day-care costs;

(5) Shared physical custody arrangements, including extended visitation;

(6) A party's other support obligations to another household;

(7) Income that should he imputed to a party because of suppression of income;

(8) In-kind income for the self-employed such as reimbursed meals or a company car;

(9) Other support a party is providing car will be providing, such as payment of a mortgage;

(10) A party's own extraordinary needs such as medical expenses;

(11) Extreme economic circumstances including but not limited to: (A) unusually high debt structure; or (B) unusually high income of either party of both parties, which shall be construed as individual gross income of over $75.000.00 per annum;

(12) Historical spending in the family for children which varies significantly from the percentage table;

(13) Considerations of the economic cost-of-living the truer of determined by fact community of each party as

(14) In-kind contribution of either parent:

(15) The income of the custodial parent:

(16) The cost of accident and sickness insurance for dependent children included in the order:

(17) Extraordinary travel expenses to exercise visitation or shared physical custody; and

(18) Any other factor which the truer of fact deems to be required the ends of justice,

(d) The guidelines shall be reviewed by a commission appointed by the Governor to ensure that their application results in the determination of appropriate child support award amounts. The commission will complete its review and submit its, report within four years following July 1, 1989, anti shall continue such reviews every four years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the guidelines without action by the General Assembly having the force and effect of law.

(e) The duty to provide support for a minor child shall continue until the child reaches the age of majority, (lies, marries, or becomes- emancipated, whichever first occur; provided, however, that, in any temporary of final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the truer of fact in the exercise of sound discretion. may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, is enrolled ill and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions, for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered.

(f) The provisions of subsection (e) of this Code section shall be applicable only to a temporary order or final decree for divorce, separate maintenance, legitimation, or paternity entered on or after July 1, 1992, and the same shall be applicable to an action for modification of a decree entered in such an action entered on or after July, 1 1992, only upon it

showing of a significant change of material circumstances. (Ga. L. 1870, p. 413, § 2; Code 1873, § 1742; Code 1882, § 1742; Civil Code 1895, § 2462; Civil Code 1910, § 2981; Code 1933, § 30-207: Ga. L. 1979, p. 466.§ 12; Ga. L. 1989, p. 861, 1; Ga. L. 1991, p. 94, § 19; Ga. L. 1992, p. 1833, § 1; Ga. L. 1994, p. 1728, § 1; Ga. L. 1995, p. 603, § 2; Ga. L, 1996, p. 4,53, § 6.)